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IN THE COURT OF SYED OBAIDULLAH SHAH,
SESSIONS JUDGE/JUDGE SPECIAL COURT/JUDGE
JUVENILE COURT, ORAKZAI (AT BABER MELA)

SPECIAL CASE NO. : 8/2(J) OF 2023
DATE OF INSTITUTION : 01.11.2023
DATE OF DECISION : 23.02.2024

STATE THROUGH MUAMMAD YOUNAS SHO, POLICE STATION
KUREZ BOYA

.....(COMPLAINANT)

-VERSUS-

MUMRAIZ KHAN S/O NAIMAT GUL, AGED ABOUT 12/13 YEARS,
R/O CASTE FERROZ KHEL, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL IN CUSTODY)

Present: Umar Niaz, District Public Prosecutor for state.
: Khursheed Alam Advocate for accused facing trial.

FIR No. 32 **Dated:** 30.08.2023 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Kurez Boya

JUDGEMENT
23.02.2024

The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA Act, 2019 vide
FIR no. 32, dated 30.08.2023 of Police Station Kurez Boya.

- (2). The case of the prosecution as per Murasila based FIR
is; that on 30.08.2023, the complainant, Muhammad Younas
SHO along with Nausher Ali SI no. 602, constable Rameez
Haider no. 1491, Saeed Gul no. 78 and Naseem Ali no. 515 in
official vehicle driven by Hassan Raza no. 674 were present
on a picket at Ghozdera Check-Post where at about 1030
hours a white colour Flying-Coach bearing Registration No.
EA-2058/Peshawar on way from Feroz Khel towards the
picket was stopped by the complainant for purpose of


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checking. A person having a school bag in his lap occupying the last seat of the vehicle was boarded on the basis of suspicion. Upon search of the bag, the complainant recovered 05 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 5000 grams. The complainant separated 10 grams of chars from each packet for the purpose of FSL and sealed it into parcels no. 1 to 5 while packed and sealed the remaining quantity weighing 4950 grams of chars along with the bag in parcel no. 6. The USB containing video of the recovery proceedings was packed and sealed by the complainant in parcel no. 7, by affixing/placing monogram of 'MY' on all parcels. The accused disclosed his name as Mumraiz s/o Naimat Gul, who was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to the Police Station through constable Rameez Haider which was converted into FIR by Moharrir Asmat Ali AMHC.

- (3). After registration of FIR, it was handed over to PW-5, Mohsin Ali OII for investigation. Accordingly, after receipt of copy of FIR, Murasila, card of arrest and recovery memo, he visited the spot and prepared site plan Ex. PW 5/1 on pointation of the complainant. On 31.08.2023, he sent the samples of chars in parcels no. 1 to 5 to FSL through constable Khial Hassan/PW-2 along with application Ex. PW 5/3 and

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road permit certificate Ex. PW 5/4. PW-5/IO also issued parwana-e-ezadgi-mulzim Ex. PW 5/7 wherein the absconding co-accused Kalam Khan was nominated in the instant case. After completion of investigation, he handed over the case file to SHO for submission of challan.

(4). Upon receipt of the case file for the purpose of trial, the accused facing trial was summoned, copies of the record were provided to him u/s 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 06 witnesses. The gist of the evidence is as follow;

I. Moharrir Asmat Ali AMHC appeared in the witness box as PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant and kept it in mal khana in safe custody by making its entry in register no. 19 Ex. PW 1/1. He has also made entry in DDs Ex. PW 1/2 and 1/3 besides handed over samples of chars in parcels no. 1 to 5 & 7 to the IO for sending the same to FSL on 31.08.2023.

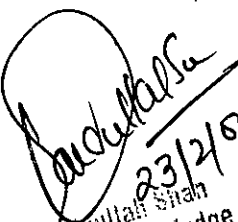
II. Constable Khial Hassan is PW-2. He has taken parcel no. 1 to 5 and 7 to the FSL for chemical analysis on 31.08.2023 and after submission of the same, he was given the receipt of the parcels


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which was handed over by him to the IO upon his return.

- III. Muhammad Younas SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.
- IV. Constable Rameez Haider appeared in the witness box as PW-4. He besides being eyewitness of occurrence is the marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-3 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.
- V. Investigating Officer Mohsin Ali was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PW 5/1 on pointation of the complainant, recorded the statements of witnesses u/s 161 CrPC, produce the accused before the court of Judicial Magistrate vide his application Ex. PW 5/2, sent the representative samples to the FSL along with the application Ex. PW 5/3 and road permit certificate Ex. PW 5/4 and the result whereof was


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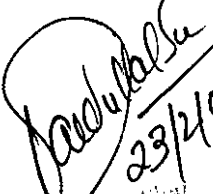
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received and placed on file by him as Ex. PK, recorded the statement of the driver of the Flying-Coach u/s 161 CrPC, proceeded against the absconding accused Kalam Khan, placed on file copies of DDs Ex. PW 1/2 & Ex. PW 1/3 and register no. 19 Ex. PW 1/1 and submitted the case file to the SHO for onward proceeding.

VI. Lastly, Rehmat Ullah, the driver of the Flying-Coach was produced as prosecution witness and was examined as PW-6. He has described the scenes occurrence on the spot and the recovery of chars from possession of the accused facing trial.

(5). Prosecution closed its evidence whereafter the statement of the accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars have been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period of 72 hours


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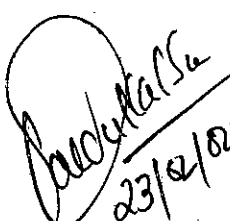
which has been found positive for chars vide report of FSL. The complainant, the witness of the recovery, the official transmitted the samples to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

- (7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution, however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

In the light of arguments advanced by learned DPP for the state and learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:

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- (i). Whether the recovery is proved to have been made from possession of accused facing trial in the mode and manner as detailed in the Murasila?
- (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
- (iii). Whether the recovered substance is proved through report of FSL as chars?
- (9). As per contents of Murasila Ex. PA/1, the complainant, Muhammad Younas SHO/PW-3 along with Nausher Ali SI no. 602, constable Rameez Haider no. 1491/PW-4, Saeed Gul no. 78 and Naseem Ali no. 515 in official vehicle driven by Hassan Raza no. 674 were present on a picket at Ghodzara Check-Post where at about 1030 hours a white colour Flying-Coach bearing Registration No. EA-2058/Peshawar on way from Feroz Khel towards the picket was stopped by the complainant for purpose of checking. A person having a school bag in his lap occupying the last seat of the vehicle was deboarded on the basis of suspicion. Upon search of the bag, the complainant recovered 05 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 5000 grams. The complainant separated 10 grams of chars from each packet for the purpose of FSL and sealed it into parcels no. 1 to 5 while packed and sealed the reaming quantity weighing 4950 grams of chars along with the bag into


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parcel no. 6. The USB containing video of the recovery proceedings was packed and sealed by the complainant in parcel no. 7, by affixing/placing monogram of 'MY' on all parcels. The complainant/PW-3 took into possession the recovered chars vide recovery memo Ex. PC. The accused disclosed his name as **Mumraiz Khan** s/o Naimat Gul, who was accordingly arrested by issuing his card of arrest Ex. PW 3/1. Murasila Ex. PA/1 was drafted and sent to the police station through Rameez Haider/PW-4 which was converted into FIR Ex. PA by Asmat Ali AMHC/PW-1.

The prosecution in order to prove the recovery of chars in the mode and manner as detailed in the Murasila Ex. PA/1 and recovery memo Ex. PC, examined the complainant, Muhammad Younas SHO as PW-3. In his examination in chief, he has reiterated the story detailed in the Murasila Ex. PA/1. With respect to his presence on the spot, he produced copy of daily diary Ex. PW 1/2 wherein vide DD no. 5 of 30.08.2023, he along with constables Nausher Ali, Rameez Haider/PW4, Saeed Gul and Naseem Ali in official vehicle have left the police station at 09:00 am for the purpose of patrolling. Similarly, vide DD no. 11 of the same date, he has returned to the police station at 1400 hours. The stance of the prosecution is further supported by the statement of constable Rameez Haider as PW-4 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has also taken the Murasila to the police station for


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registration of FIR. He has narrated the same story as that of narrated by the complainant in his statement as PW-4.

The statements of the complainant and eyewitness are tried to be shattered in the cross examination on the grounds; that the name of the driver of the Flying-Coach is not mentioned in the Murasila or in the site plan, that the colour of the school bag has not been specified by the complainant, that the complainant has not shown the colour or texture of the recovered chars and that there are contradictions in the statements of both the witnesses regarding the time of departure and arrival of the complainant to and from the PS and that of the time of arrival and departure of the IO to and from the spot of occurrence.

Keeping in view the aforementioned objections of defence, careful perusal of the material available on file coupled with statements of the PWs shows; that as the statements of complainant and eyewitness are consistent regarding the time, date and place of occurrence, the mode and manner of recovery and the mode and manner of proceedings conducted by him on the spot; therefore, their statements cannot be thrown away on the aforementioned dents for the reasons that all the material and relevant facts are mentioned in the Murasila Ex. PA/1 and site plan Ex. PB. Second, true, the name of the driver of the vehicle is not mentioned in the Murasila but he was produced before the court as PW-6 and mere non-mentioning of the name of the driver of the vehicle

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in the Murasila does not render the aforementioned documents inadmissible in evidence. Third, it is also true that the colour or texture of the recovered chars are not mentioned by the complainant in the Murasila but this fact has been explained by the witness in his cross examination. Fourth, the time of arrival of the complainant party to the spot, interception of the accused, the time of leaving the spot to the police station and the time of arrival and departure of the IO have been explained and documented properly. Fifth, the prosecution has produced one, Rehmat Ullah, the driver of the Flying-Coach who in his statement as PW-6 corroborated the stance of the prosecution and recovery of the contraband from possession of the accused facing trial.

Hence, in view of what is discussed above, it is held that the presence of the complainant and the eyewitness on the spot at the relevant time is also proved. The statements of both the witnesses could not have been shattered in cross examination regarding material facts. Therefore, the recovery of 5000 grams of chars is proved by the prosecution beyond shadow of any doubt.

- (10). With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. PA/1, FIR Ex. PA and recovery memo Ex. PC is; that after drafting of Murasila, recovery memo and card of arrest of the accused by the complainant, the same were handed over to PW-4 constable Rameez Haider who took the same to police station


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and handed over to PW-1 Asmat Ali AMHC, the Moharrir of the police station who registered FIR Ex. PA on the basis of Murasila Ex. PA/1. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to Incharge Investigation Mohsin Ali/PW-5. The said PW proceeded to the spot where he prepared site plan Ex. PB on pointation of the complainant and recorded the statements of witnesses u/s 161 Cr.P.C. In order to prove its stance, the prosecution has produced Constable Rameez Haider as PW-4, Asmat Ali AMHC as PW-1 and Mohsin Ali OII as PW-5. All the three witnesses narrated the aforementioned story in their statements. With respect to the arrival of the IO on the spot, the complainant as PW-3 and Mohsin Ali SI as PW-5 are unanimous regarding the time of the arrival of the IO on the spot and the time of departure of the IO from the spot. The statement of witnesses of the prosecution are consistent regarding the mode and manner of the proceedings conducted on the spot and nothing contradictory could have been extracted from the mouth of any of the above-named witness either to disprove the chain of facts or the mode and manner of investigation conducted on the spot; therefore, the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged, without shadow of any doubt.

(11).

The case of the prosecution regarding the chain of the custody of the case property, transmission of the representative

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samples to the FSL within the prescribed period of time and following full protocols of the tests applied in the FSL is; that after seizure of the contrabands by the complainant/PW-3, containing 05 packets, 10 grams from each of the packet has been separated and sealed by him on the spot by affixing of three monograms of 'MY' on each of the parcel. The complainant, after his arrival to the police station, has handed over the case property including the representative samples to PW-1 Asmat Ali AMHC, who has made entry of the case property in register no. 19 Ex. PW 1/1 and has kept the same in safe custody. On 31.08.2023, the Incharge Investigation Mohsin Ali/PW-5 has collected the samples from Moharrir and handed over the same to constable Khial Hassan/PW-2 to transmit it to FSL, who has transmitted the same against a road permit certificate and deposited it in the FSL against proper receipt which on return has been handed over to the IO. After receipt of FSL report Ex. PK, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-3, Asmat Ali AMHC as PW-1, Mohsin Ali SI, the IO of the case as PW-5 and constable Khial Hassan as PW-2. All the four witnesses have narrated the aforementioned story in their statements. With respect to transmission of the samples to FSL, PW-2 in cross examination confirmed the facts that on 31.08.2023 the IO handed him over the samples in sealed condition and he left the police station at 09:00 am, reached the FSL, handed over

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the parcels to the official of FSL against a proper receipt which on return he handed over to the IO and that he returned the police station on same day.

In view of what is discussed above, the prosecution has proved beyond shadow of any doubt the chain of the custody of case property including the representative samples from the spot till the representative samples are received in the FSL. Similarly, as per report of FSL Ex. PK, the representative samples no. 1 to 5 were found positive for chars after following full protocols of the tests applied. Hence, the case of the prosecution is substantiated by the report of FSL.

- (12). In these circumstances, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, **Mumraiz Khan** is held guilty for having in his possession 5000 grams of chars. Therefore, he is convicted of the offence. But as the accused is of the age of 12/13 years and there is no record of his previous involvement in such like offences; therefore, a lenient view is taken with the accused and he is placed on probation for a period of 02 (two) years subject to the executing of bonds in the sum of Rs. 50,000/- with two sureties to the effect that the accused would commit no offence and to keep the peace and be of good behaviour during the period of bond and to appear and receive the sentence, if called upon to do so during that period to the satisfaction of Probation Officer concerned.

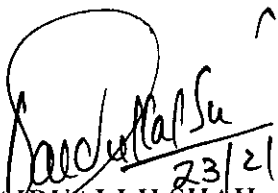
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With respect to absconding co-accused **Kalam Khan**, prima facie case has been made out; therefore, he is declared proclaimed offender. Perpetual warrant of arrest be issued against him and District Police Officer, Orakzai is directed to enter his name in the register of proclaimed offenders. All the legal course be adopted for his arrest and he be brought before the court as and when arrested. Case property be kept intact till final disposal of the case.

Judgment announced. File of this court be consigned to record room after its necessary completion and compilation. Copy of this judgment also be placed on case titled "State VS Kalam Khan".

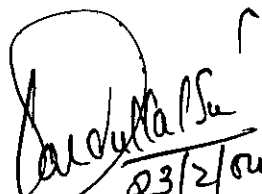
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CERTIFICATE

Certified that this judgment consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 23.02.2024


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SYED OBAIDUALLH SHAH
Sessions Judge/Judge Special Court/Judge
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